



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

01 SEP 2005

Ref: 05-F-1956

The Honorable John Conyers, Jr.
U.S. House of Representatives
Washington, DC 20515-6216

Dear Representative Conyers:

This is in response to your June 30, 2005, Freedom of Information Act (FOIA) request signed by you and 51 other Members of Congress, as revised by your July 28, 2005, letter. Since this FOIA request was submitted by Members unrelated to any official Congressional Committee business, it will be treated like any other request from the public.

Your revised request is still highly complex and will take a considerable time to process. Because of this complexity, thorough searches will need to be conducted through ten years of Department of Defense (DoD) records maintained in multiple locations including staff elements within Office of the Secretary of Defense and the Joint Staff, the United States Central Command, three separate defense components (Defense Intelligence Agency, National Geospatial-Intelligence Agency and National Reconnaissance Office), and various records holding facilities in the United States and overseas. Any responsive documents located in the searches would be subject to review and information exempt from release under the FOIA may be withheld. Documents may be redacted and released in part as a result of this review. Many of the DoD personnel who would conduct these searches and reviews of any responsive records are also involved in current operational matters. Please understand that your request will have to be worked within the Department's operational priorities.

Regarding your request for a fee waiver, DoD Regulation 5400.7-R, available on the internet at <http://www.defenselink.mil/pubs/foi/index.html>, establishes the necessary criteria for the granting of a fee waiver.

Initially, I evaluated whether the subject of the requested records concerns the operations or activities of the Agency. Clearly, since the records in question pertain to decisions which led to our military operations in Iraq, the subject meets this threshold.

Secondly, I evaluated whether the disclosure is meaningful and would likely contribute to an understanding of Agency operations or activities. As these documents relate to decisions leading to military actions in Iraq, it is possible that disclosure would provide potentially meaningful information on our operations. However, that decision cannot be conclusive until the releasable information, if any, is reviewed.

The third factor requires me to consider whether disclosure would contribute to the understanding of the public at large, as opposed to the requester's understanding or a narrow segment of interested persons. For the purpose of this analysis, the requester's identity and capability to disseminate must be considered to determine whether they are in a position to contribute to public understanding through the disclosure. Assertions of plans to disseminate the information without demonstrating the capability to disseminate to the general public is insufficient.

Your request states that "Many House Committees publish information that is disseminated to the public, and is widely available to the public at no cost." This statement, while true, does not provide the justification necessary to show how you will disseminate the information. You do not mention which House Committee intends to disseminate the information or the method of dissemination. Furthermore, this request is not made by a House Committee; rather, it is made by 52 individual Members of Congress, and it is not clear how they will disseminate the information to the general public.

The final factor addressing public interest considerations is whether the contribution to public understanding of Agency operations or activities is significant. As is true for the second factor above, this determination cannot be made until the releasable information is reviewed.

In accordance with the FOIA and DoD 5400.7-R, we have categorized you as an "other" requester for the purpose of fees, which entitles you to two hours of search and 100 pages of reproduction at no cost. Beyond that, however, you would be responsible for paying the costs for processing this request based on the following DoD fees schedule: clerical search, \$20.00 per hour; professional search, \$44.00 per hour; executive search, \$75.00 per hour; and office copy reproduction, \$0.15 per page. In accordance with DoD 5400.7-R, all requesters should state a willingness to pay applicable fees before processing commences.

It should be noted that this Office is responsible for the processing of FOIA requests for the Office of the Secretary of Defense and the Joint Staff (OSD/JS). The various agencies and Combatant Commands of the Department of Defense independently operate their own FOIA offices. In addition to processing within OSD/JS, as noted in the second paragraph, we have identified three DoD components (Defense Intelligence

Agency, National Geospatial-Intelligence Agency, and National Reconnaissance Office) and the U.S. Central Command which would individually process this request and respond directly to you.

As previously indicated, I anticipate the searches will be quite extensive, and could result in considerable expenditure of agency resources. I have received estimates of search time from the DoD components previously mentioned and estimate that it will take over 2,500 hours just to search for responsive documents. If these searches are done at the professional level, which most searches are, our current fee estimate for the processing of this request is \$110,000; which does not include reproduction charges. Please note that because documents responsive to item one of the request are already in the public domain, processing fees for those documents cannot be waived.

In summary, I cannot favorably consider your request for a fee waiver based on the information contained in your request, primarily because it offered no information on how you plan to disseminate the information to the general public. Additionally, as stated above, until the DoD components review the releasable information, if any, a final decision on the granting of a fee waiver cannot be made. You may appeal this decision by writing to the above address within 60 days of the date of this letter. Should you decline to submit an appeal, please forward a statement relative to your willingness to pay fees. When we receive this willingness to pay fees, we will task the appropriate components of the OSD/JS to search for and review responsive documents, and will then respond to you when this processing is complete. We also will refer your request to the five previously mentioned components of the DoD for processing and direct response to you. Each of these five components have a "piece" of the 1,500 search hours, and will advise you, upon receipt of our referral, a more accurate estimate of fees for their component. Each component will grant you two hours of search and 100 pages of reproduction at no cost. Because the FOIA allows for agencies to ask for advance payment of processing fees when it is determined that they will exceed \$250 (5 U.S.C. § 552 (a)(4)(A)(v)), this Office and each of these components reserve the option to ask for an advance payment before processing commences.

Sincerely,

A handwritten signature in black ink that reads "Will Kammer". The signature is written in a cursive, slightly slanted style.

Will Kammer
Chief